

Ser. No. 10/680,726

Amendment After Final Office Action of 3 January 2006

Atty Docket 117163-93

## REMARKS

Claims 1, 11, 12 and 19-27 were pending at the time of the mailing of the outstanding Office Action. By this amendment, claims 1 and 21 have been amended.

In the Office Action of 3 January 2006, the Examiner rejected claims 1, 11, 12 and 19-27 under 35 U.S.C. § 102(b) as anticipated by US Pat. No. 6,445,948 to Somdahl et al. (hereinafter "Somdahl"). Claim 1 was previously amended to recite the presence of structures that compensate for discharge-induced swelling of the battery that include free spaces adjacent to the peripherally extending narrow side of the battery. Claim 21 recites similar structures. The Examiner maintains that Somdahl's retainer and spaces compensate for battery swelling. The Applicants continue to assert that Somdahl neither teaches nor suggests compensating structures that include free spaces adjacent to the peripherally extending narrow side of the battery, as recited in claims 1 and 21. Therefore, Somdahl can not be said to teach or suggest this element of claims 1 and 21.

Additionally, claims 1 and 21 have been further amended to recite that the underside of the component carrier is essentially flat and is located adjacent to the flat side of the battery. Support for this amendment may be found in Figs. 3, 5a and 7a and in paragraphs 0038, 0040 and 0042. In contrast, Somdahl provides an implantable medical device that contains a battery (380) located on the opposite side of the flat side of a circuit board (362) (see Figs. 3(f)-(g)). Somdahl indicates, "Major surfaces 384 of battery 380 are sized and shaped to correspond with front face 370 of electronics module 360." (column 13, lines 62-64). Front face 370 of electronics module 360 is clearly the opposite of the underside of flat circuit board 362 of Somdahl. Therefore, independent claims 1 and 21, as amended, further distinguish over Somdahl. Claims 11, 12 and

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19-27, which depend from and include all the limitations of claims 1 or 21, also patentably distinguish over Somdahl.

Claims 21 - 27 further distinguish over Somdahl. Claim 21 recites structures that compensate for discharge-induced swelling of the battery where these structures include joining elements between the battery and the circuit that permit movement of the circuit relative to the battery. The Examiner alleges that the swelling-compensating structures that include joining elements between the battery and the circuit that permit a relative movement of the circuit with respect to the battery are taught by Somdahl because both devices, "are configured for the placement of electronic components such as circuits, batteries, and the like." The Applicants maintain that this is insufficient to establish a prima facie case of obviousness of claim 21. Claim 21 does not merely recite a configuration "for the placement of electronic components" but rather "structures that compensate for discharge-induced swelling of the battery; wherein the structures include joining elements between the battery and the circuit wherein said elements permit a relative movement of the circuit with respect to the battery." Even if the structures of Somdahl do allow placement of electronic components, this does not anticipate structures that permit relative movement of the circuit and battery as recited. Furthermore, as Applicants previously stated, Somdahl's attachment means do not teach or suggest any allowance of movement of the circuit relative to the battery. To the contrary, the specific examples of Somdahl, "adhesive, tape, clamp or other mechanical attachment device" (column 14, lines 61 - 63) not only do not suggest relative movement, but suggest an absence of relative movement, thereby teaching away from the invention as recited in claim 21.

In view of the foregoing arguments the applicant submits that the claims are in a condition to permit allowance. Withdrawal of the rejection of claims 1, 11, 12 and 19-27 under

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35 U.S.C. § 102(b) and issuance of a Notice of Allowance is respectfully requested. Because the amendments presented herein place the claims under consideration in condition for allowance, entry of this Amendment after Final Rejection is appropriate. None of the amendments will necessitate an additional search. In the event that the Examiner disagrees with the Applicants regarding the allowability of the pending claims, entry of the Amendment should still be made on the grounds the amendment of claims 1 and 21 simplifies matters under consideration for appeal.

The outstanding Office Action was mailed on 3 January 2006. This Response is believed to be timely with no fees due. However, in the event that a fee is required with the filing of this paper, the Commissioner is authorized to charge any fee or to credit any overpayment associated with the filing of this paper to Deposit Account 15-0450.

Respectfully submitted,



John J. Cunniff  
Reg. No. 42,451

Hahn Loeser & Parks LLP  
One GOJO Plaza  
Suite 300  
Akron, OH 44311  
330-864-5550  
Fax 330-864-7986  
[jcunniff@hahnlaw.com](mailto:jcunniff@hahnlaw.com)